

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,

Plaintiff,

v.

DELL TECHNOLOGIES INC., DELL
INC., EMC CORPORATION, AND
VMWARE, INC.,

Defendants.

Case No. 6:20-cv-00485-ADA

JURY TRIAL DEMANDED

**DEFENDANTS' SECOND NOTICE OF SUPPLEMENTAL EVIDENCE IN SUPPORT
OF OPPOSED MOTION FOR INTRA-DISTRICT TRANSFER OF VENUE
TO THE AUSTIN DIVISION OF THE WESTERN DISTRICT OF TEXAS**

Defendants respectfully submit this Second Notice of Supplemental Evidence in support of their opposed motion for intra-district transfer of venue to the Austin Division.¹ *See Pacheco v. Dibco Underground, Inc.*, No. A-08-CA-187-SS, 2009 WL 10669462, at *1 (W.D. Tex. Mar. 3, 2009) (considering supplemental evidence).

After Defendants submitted their first notice of supplemental evidence, Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“WSOU”), on April 29, 2021, submitted its Rule 26(a) initial disclosures. *See* Ex. 22 (Rule 26(a) Disclosures). WSOU has now confirmed in this action that Craig Etchegoyen and Stuart Shanus are the two individuals “with knowledge of WSOU’s licensing practices.” *Id.* at 2-3. Messrs. Etchegoyen and Shanus do not

¹ Defendants’ motion for intra-district transfer was filed on November 4, 2020, D.I. 43, the opposition was filed on November 18, 2020, D.I. 53, and the reply was filed on November 25, 2020, D.I. 56. On February 5, 2021, Defendants filed a notice of supplemental evidence that provided a declaration from Stuart Shanus indicating that WSOU’s witnesses most knowledgeable about its licensing practices are Mr. Shanus and Craig Etchegoyen. D.I. 75 at 1-2.

live in Texas. WSOU has also confirmed that Matt Hogan—WSOU’s sole listed employee based in Waco—is knowledgeable only about WSOU’s “business development, documents, and employees.” However, these items have limited relevance, if any, to whether the asserted patent is valid and infringed. *In re Genentech Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (explaining “the bulk of the relevant evidence usually comes from the accused infringer”).

WSOU further indicated that individuals with discoverable information are Defendants’ employees and representatives, individuals identified by Defendants, and individuals and corporations identified in third-party subpoenas. Ex. 22 (Rule 26(a)) at 3. However, WSOU has not identified any of these people as being in the Waco Division. D.I. 43 (Transfer Motion) at 7-8.

On May 28, 2021, WSOU granted a security interest in the Asserted Patent to OT WSOU Terrier Holdings, LLC, a Delaware limited liability company. *See* Ex. 23 (Security Agreement) at 1. That patent security agreement was signed by Mr. Shanus, not Mr. Hogan nor Sheyanna Osceola (WSOU’s Waco-based in-house counsel), further confirming that WSOU’s Waco-based employees have minimal, if any, involvement with the Asserted Patent. *Id.* at 4.

On August 13, 2021, WSOU submitted a power of attorney to the Patent Office involving one of the patents asserted against Defendants. *See* Ex. 24 (Power of Attorney for U.S. Patent No. 7,424,020). The authorization for changing the power of attorney was signed by Mr. Shanus—not Mr. Hogan, nor Ms. Osceola.² This is consistent with WSOU’s other submissions to the Patent Office that require a WSOU employee signature; they are not signed by any Waco-based employees. *See, e.g.*, Ex. 26 (Powers of Attorney from four *inter partes* reviews) at 3, 6, 10, 14. This further supports Defendants’ pending motion for intra-district of venue to the Austin Division.

² Consistent with Mr. Shanus directing WSOU’s activities related to its lawsuits against Defendants, WSOU maintains an office in Santa Monica, California. *See* Ex. 25 (Juniper Hearing) at 21:17-21; 22:8-14.

Dated: August 20, 2021

By: /s/ Barry K. Shelton

Barry K. Shelton
Texas State Bar No. 24055029
bshelton@sheltoncoburn.com
SHELTON COBURN LLP
311 RR 620, Suite 205
Austin, TX 78734-4775
Telephone: 512.263.2165
Facsimile: 512.263.2166

Benjamin Hershkowitz
bhershkowitz@gibsondunn.com
Brian A. Rosenthal
brosenthal@gibsondunn.com
Allen Kathir
akathir@gibsondunn.com
Kyanna Sabanoglu
ksabanoglu@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Y. Ernest Hsin
ehsin@gibsondunn.com
Jaysen S. Chung
jschung@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Ryan K. Iwahashi
riwahashi@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304-1211
Telephone: 650.849.5300
Facsimile: 650.849.5333

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of August 2021, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a).

/s/ Barry K. Shelton
Barry K. Shelton